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NO. [redacted] 1144

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

WILLIAM L. HEAD AND
JESSE M. CUMMINGS ..... Petitioners

vs.

THE STATE OF MISSISSIPPI ..... Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	3
STATEMENT OF CASE	3-7
REASON FOR GRANTING WRIT	8-13
CONCLUSION	13-14
APPENDIX	
A. Opinion of Supreme Court of Mississippi, rendered January 22, 1962	
B. Opinion of Supreme Court of Mississippi, rendered February 26, 1962	

CITATIONS

Mapp v. Ohio, 367 U. S. 643, 81 S. Ct. 1684, rehearing denied 82 S. Ct. 23	8
Jones v. United States, 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697, 78 ALR 2d 233	8
Rios v. United States, 364 U. S. 253, 80 S. Ct. 413, 4 L. Ed. 2d 1688	8
Elkins v. United States, 364 U. S. 206, 80 S. Ct. 1437, 4 L. Ed. 2d 1669	8
Smith v. State, 240 Miss. 738, 128 So. 2d 857	8
Head v. State, 136 So. 2d 619	10
Jones v. United States, 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697, 78 ALR 2d 233	10-11
Contreras v. United States, 291 Fed 2d 63 (1961)	11-12

Page

United States v. De Ri, 332 U. S. 581, 68 S. Ct. 282, 92 L. Ed. 210 13

Jones v. United States, 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697, 78 ALR 2d 233 14

Smith v. State, 240 Miss. 738, 128 So. 2d 857 14

Rio v. United States, 364 U. S. 253, 80 S. Ct. 413, 4 L. Ed. 2d 1669 14

Contreras v. United States, 291 Fed 2d 63 (1961) 14

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Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Mississippi entered in the above entitled cause on January 22, 1962, and the action of said court overruling a suggestion of error entered on February 26, 1962.

CITATIONS TO OPINIONS BELOW

On January 22, 1962, the Supreme Court of Mississippi rendered an opinion in the above entitled cause, being No. 41,948 on the docket in the Supreme Court of Mississippi, affirming a conviction of petitioners in the Circuit Court of Forrest County, Mississippi, for the possession of burglary tools, a copy of which opinion is attached hereto as Appendix A.

On February 26, 1962, the Supreme Court of Mississippi rendered a further opinion in the above entitled case overruling a motion for suggestion of error, a copy of which opinion is attached as Appendix B.

JURISDICTION

The jurisdiction of this court is invoked under the Fourth and Fourteenth Amendments to the Constitution of the United States.

The federal question sought to be reviewed was first raised when specific and continuing objections were made to the testimony of Sheriff Bob Waller in the Circuit Court of Forrest County, Mississippi, concerning objects obtained as a result of an unlawful search and seizure (R. 74), and again at the conclusion of the testimony of Sheriff Bob Waller when a motion was made to strike the sheriff's testimony and to declare all exhibits obtained in the unlawful search and seizure to be inadmissible (R. 115-116).

The federal question was again raised on appeal to the Supreme Court of Mississippi where the issue of the illegal and unlawful search and seizure of alleged burglary tools which petitioners were convicted of having in their possession was rejected. The Supreme Court of Mississippi, stated:

> "In order to avail of the constitutional provision of unlawful search and seizure, the sheriff must invade the premises or property of defendant and such defendant must at least have a right of possession that would make him owner for the time being."

And the Supreme Court of Mississippi concluded petitioners did not have such a "right of possession" even though they were convicted of possession of the tools found as a result of the unlawful search and seizure.

QUESTION PRESENTED.

The primary question presented is the validity of a search and seizure conducted by Sheriff Bob Waller of Forrest County, Mississippi, without warrant and not as an incident to a lawful arrest, the fruits of which, search and seizure became the sole basis for petitioners conviction.

STATEMENT OF CASE

Petitioners were passengers in a Chevrolet Impala automobile which was owned and being operated at the time by a third party, Berry Smith, Jr. It was about 8:30 p.m. on Monday, August 29, 1960, and the car was proceeding at a slow rate on the road to the airport near the City of Hattiesburg, Mississippi. (R. 63-64) Sheriff Bob Waller was approaching from the opposite direction at about ten or fifteen miles per hour in an unmarked 1950 Ford. There was nothing about the appearance of the sheriff or his automobile that would identify his official position. Sheriff Waller proceeded beyond the car in which petitioners were passengers, turned around and approached the Chevrolet Impala from the rear. As he approached, the Chevrolet Impala stopped by the side of the road and the driver motioned for the sheriff's car to pull up beside the Chevrolet Impala, which he did (R. 65). While the sheriff was in the process of rolling down his window, the Chevrolet Impala "really took off." (R. 66) In about ten to twelve seconds the Chevrolet Impala was exceeding the speed limit (R. 103), and Sheriff Waller was in pursuit and sounded his siren (R. 66). The sheriff's unmarked 1950 Ford had a Mercury engine, a four-barrel carburator, shaved head, and was very "hot." (R. 67) The flight and pursuit continued for several miles during which time the Chevrolet Impala ran two red lights, and Sheriff Waller radioed

ahead for the highway patrol to intercept the Chevrolet Impala. At times the sheriff and Highway Patrolman Puckett exceeded 100 miles per hour. (R. 67-70)

A short time later the Chevrolet Impala voluntarily came to a stop, and Sheriff Bob Waller pulled in front of the car and Highway Patrolman Puckett to the rear (R. 73). The highway patrolman arrested the driver, Berry Smith, Jr., for speeding (R. 128, 73). The sheriff arrested petitioners because they "were occupants of a car who had jeopardized lives from airport to Vance's Dairy." (R. 112) The car in which petitioners were riding was locked and left by the road while the driver, Berry Smith, Jr., and petitioners were taken to the county jail where they were searched and locked up.

Between 45 minutes and an hour later (R. 74) Sheriff Waller and Highway Patrolman Puckett returned to the automobile in which petitioners had been riding, searched same, and found in the trunk thereof the tools on which the present action for unlawful possession of burglary tools is predicated. The search was conducted without a warrant and without the consent of Berry Smith, Jr., or petitioners (R. 108). At the time of making this search, as well as when the chase commenced, Sheriff Waller had no information concerning the possibility of the Chevrolet Impala being used to haul whiskey (R. 107), the petitioners were not committing a crime in the sheriff's presence, and at no time did he see or suspect petitioners of having committed a crime or being wanted in connection with the commission of a crime. (R. 108) The only offense which occurred at any time insofar as the sheriff's authority to arrest and search is concerned, happened about ten or twelve seconds after the Chevrolet Impala "really took off" (R. 66) from a stopped position. This offense consisted of operating a vehicle at an exces-

sive and unlawful rate of speed and did not involve or concern petitioners.

After the unlawful arrest of petitioners and an even later search of the Chevrolet Impala in which petitioners had been passengers, the petitioners and the owner and operator of the vehicle, Berry Smith, Jr., were jointly charged with the wrongful possession of certain tools found in the trunk of the car which are alleged to be burglary tools. Following an indictment on November 14, 1960, by the grand jurors of Forrest County, Mississippi of Berry Smith, Jr., Jesse M. Cummings and William L. Head for "unlawfully, knowingly, and feloniously" having in "their possession certain tools . . . designed to aid in the commission of burglary" (R. 2), a severance was obtained and Berry Smith, Jr., was tried separately (R. 59-62).

Over petitioners' objection, the state permitted Sheriff Bob Waller to identify and received in evidence the following articles set forth in the indictment:

Exhibit No.	*Article*	*Place Found*	*Record*
2	1 metal tool with grabbing tongs	trunk of car	R. 77-78
3	1 little drill and bit	trunk of car	R. 78
5	1 pair of leather gloves	trunk of car	R. 80-81
6	1 pair of cotton gloves	under dashboard of car	R. 81
7	1 power saw with hacksaw blade	trunk of car	R. 82-
8	1 manual hacksaw	trunk of car	R. 83-84
10	1 pair of pliers	trunk of car	R. 85-87
14	1 gas mask	trunk of car	R. 93

In addition to the foregoing articles alleged to be burglary tools and found, except for the cotton gloves, in the trunk of the car, there was also introduced the following items:

Exhibit No.	*Article*	*Place Found*	*Record*
1	.45 Revolver and six cartridges	under front seat of car	R. 74-77
4	1 pair of cotton gloves	found on side of Highway 49	R. 78-80
9	Assorted number of money wrappers	somewhere in car	R. 84
11	Man's sock with undisclosed number of coins in it	in one of three suitcases found in trunk of car	R. 87-88
12	1 man's cap	found by roadside	R. 88-89
13	1 shoulder holster	somewhere in car	R. 89-90
17	one .38 pistol with six cartridges	found by highway several days later by college student	R. 91-92, 132-136

Highway Patrolman J. C. Puckett collaborated the sheriff's testimony with reference to the chase subsequent to when he joined the chase as a result of a radio call, and with respect to the search of the Chevrolet Impala sometime after the arrest (R. 117-127). The highway patrolman actually arrested Berry Smith, Jr., the driver of the Chevrolet Impala, and the sheriff arrested the petitioners (R. 127-128).

An eighteen year old college student, Jimmy Wiltshire, testified that he found a .38 pistol by the side of Highway

45 while hitch-hiking to Jackson (R. 131). He delivered the .38 pistol to an attorney friend, George Gulley, Jr., in Brookhaven, Mississippi (R. 134). The pistol offered in evidence (Exhibit No. 17) looks like the one he found (R. 134-135) but he would not swear it was the same one (R. 137-138).

A former member of the Hattiesburg Police Department, Hugh Herring, who has 23 years experience and who is presently deputy fire marshall for the State of Mississippi, testified over vigorous objection (R. 141-143) that there were safes in Forrest County which were equipped with tear and sickening gas that would be released in case anyone attempted to crack the safe. He also testified the .38 calibre pistol, Exhibit 13, which was found by the road side, fit the shoulder holster which was found somewhere in the car (R. 146, 89-92). On cross-examination, Mr. Herring admitted the tools presented as exhibits were not adequate for cracking a safe by any of the known methods since no chisel and hammer were present, the bit did not fit the drill, and there was no other tool by which initial entry into a safe could be accomplished (R. 151-162). He expressed the opinion the tools could be used to assist other acts of burglary.

After the state rested, the defense moved to exclude those exhibits which were found on the highway, being cotton gloves, a cap and the .38 calibre pistol. The motion was sustained as to the cotton gloves and cap, but overruled as to the pistol (R. 182).

The defense made a motion for a pre-emptory instruction to the jury which was overruled (R. 183). The defense presented no evidence.

REASONS FOR GRANTING THE WRIT

Unless this writ is granted the rights of these petitioners under the Fourth and Fourteenth Amendments to the Constitution of the United States as recently determined by this honorable court in *Mapp v. Ohio,* 367 U. S. 643, 81 S. Ct. 1684, rehearing denied, 82 S. Ct. 23; *Jones v. United States,* 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697, 78 ALR 2d 233; *Rios v. United States,* 364 U. S. 253, 80 S. Ct. 413, 4 L. Ed. 2d 1688; and *Elkins v. United States,* 364 U. S. 206, 80 S. Ct. 1437, 4 L. Ed. 2d 1669, will be violated an denied.

The violations of petitioners' constitutional rights have resulted from an invalid arrest followed later by an unlawful search and seizure by a state officer, County Sheriff Bob Waller. The evidence obtained as a result of this search resulted in a joint indictment against petitioners and the owner and operator of the automobile in which they were passengers, Berry Smith, Jr., for "unlawfully, knowingly and feloniously" having in "their possession certain tools . . . designed to aid in the commission of burglary." (R. 2)

Berry Smith, Jr., owner and operator of the automobile, was tried separately, and the Supreme Court of Mississippi recognized the invalidity of the search and seizure as to Berry Smith, Jr., reversed and dismissed his conviction in *Smith v. State,* 240 Miss. 738, 128 So. 2d 857. In the *Smith* case, the court stated:

> "The question to be determined in this case is: Was the search of defendant's automobile a lawful search? . . . What right, if any, did the officer have to search the possessions of the defendant? . . .
>
> • • •

> The evidence in this case discloses that the officer had no reason to believe that the person driving the Chevrolet Impala had committed a felony when he drove up beside the defendant, therefore, the sheriff had no duty to make an arrest of the defendant unless it was sufficiently evident to the sheriff at this time that the driver of the Chevrolet was committing a crime in his presence, or there was some 'breach of the peace, threatened or attempted in his presence.' . . . This court has held, however, that the search begins when the pursuit begins . . . And an arrest begins when an officer begins his pursuit for the purpose of making an arrest. If an officer does not have the authority to make an arrest at the instant he begins his pursuit for the purpose of making the arrest, the fact that the person the officer is pursuing volates the traffic law in making his escape does not thereby authorize the arrest that began unlawfully, because an officer who attempts an unlawful arrest cannot later arrest a citizen for resisting such trespass . . .
>
> • • •
>
> In the case at bar, there was no evidence that the defendant was committing a crime or was attempting to breach the peace, when the sheriff began his pursuit. The sheriff had no duty nor right to arrest the defendant at that time; therefore, the search made of the defendant's automobile was an incident to an illegal arrest, and was an unlawful search."

A *fortiori*, if the driver (Berry Smith, Jr.) had not committed an offense which would render the subsequent search and seizure illegal, the petitioners, who were innocent passengers, had not committed an offense which would sustain the search and seizure as to them. However, on appeal of petitioners' conviction to the Supreme

Court of Mississippi, the court affirmed their conviction on January 22, 1962, *Head v. State,* 136 So. 2d 619, and stated:

> "In order to avail of the constitutional provision of unlawful search and seizure, the sheriff must invade the premises or property of defendant and such defendant must at least have a right of possession that would make him owner for the time being.
>
> * * *
>
> Since the defendants were not in possession of the automobile, either in the control or ownership of the car, they have no right to raise the constitutional question of search. . . ."

While denying these petitioners had a right of possession that would make them owner for the time being of the tools found in the trunk of the automobile in which petitioners were riding as passengers insofar as the question of unlawful search and seizure was concerned, the court in the same breath permitted the state to use this evidence in convicting petitioners of "unlawfully, knowingly, and feloniously" having in their "possession certain tools . . . designed to aid in the commission of burglary." (R. 2) In so holding, the Supreme Court of the State of Mississippi is in direct conflict with the holding of this court in *Jones v. United States,* supra. In the Jones case, it was stated:

> ". . . Two separate lines of thought effectively sustain defendant's standing in this case. (1) The same element in this prosecution which has caused a dilemma, i. e. that possession both convicts and confers standing, eliminates any necessity for a preliminary showing of an interest in the premises searched or the property seized, which ordinarily is required when standing is challenged. (2) Even were this not a prosecution turn-

ing on illicit possession, the legally requisite interest in the premises was here satisfied, for it need not be as extensive a property interest as was required by the courts below.

As to the first ground, we are persuaded by this consideration: to hold to the contrary, that is, to hold that petitioner's failure to acknowledge interest in the narcotics or the premises prevented his attack upon the search, would be to permit the government to have the advantage of contradictory positions as a basis for conviction. Petitioner's conviction flows from his possession of the narcotics at the time of the search. Yet the fruits of that search, upon which the conviction depends, were admitted into evidence on the ground that petitioner did not have possession of the narcotics at that time. The prosecution here thus subjected the defendant to the penalties meted out to one in lawless possession while refusing him the remedies designed for one in that situation. It is not consonant with the amenities, to put it mildly, of the administration of criminal justice to sanction such squarely contradictory assertions of power by the government. The possession on the basis of which petitioner is to be and was convicted suffices to give him standing under any fair and rational conception of the requirements of Rule 41 (e)."

The case at bar is analogous to *Contreras v. United States*, 291 Fed. 2d 63 (1961), in which there was even stronger justification for searching the automobile, but the court applied the rule announced in *Jones v. United States*, supra. In the *Contreras* case the highway inspector of the Immigration and Naturalization Service stopped an automobile on a highway in California about 72 miles north of the Mexican border to perform a routine

check for "illegal aliens." They questioned the occupants of the automobile and became suspicious of one of the passengers in the back seat. When he asked a passenger in the front seat to step out so he could converse with him, the inspector noticed for the first time a paper sack covered by a leather jacket and a bedspread which he learned on examination contained Marijuana. In reversing the conviction and remanding the case with instructions to dismiss the indictment as to each of the occupants of the car, the court stated:

"The case thus presents only two questions:

1. Did the appellants have standing to move for the suppression of evidence and to object to the introduction of the evidence?

2. Was the evidence obtained by an illegal search?

When the trial court denied the motion to suppress, the case of Jones v. United States, 1960, 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697, *had not yet been decided*. In the light of that case, this court must reject the trial court's ruling that appellants had no standing to raise the search and seizure question. Where a criminal charge against a defendant is based upon possession, the Jones case establishes that the defendant is, by the very fact, a 'person aggrieved by an unlawful search and seizure,' . . . and may, therefore, raise the constitutional question. The Supreme Court in the Jones case stated further that the government should not be allowed to deprive a 'defendant of standing to bring a motion to suppress by framing the indictment in general terms while, prosecuting for possession.' . . .

* * *

The search involved here was made without a warrant; and it was not made in connection with a lawful arrest,

since the arrest admittedly was made after the search and seizure took place. . . ."

It would appear the state officers in searching, and the Supreme Court of the State of Mississippi in approving petitioners' conviction, were acting under a mistaken assumption rejected in *United States v. De Ri*, 332 U. S. 581, 68 S. Ct. 282, 92 L. Ed. 210, in which the court stated:

"The belief that an automobile is more vulnerable to search without warrant than is other property has its source in the decision of Carroll v. United States, 267 U. S. 132, 69 L. Ed. 543, 45 S. Ct. 280, 39 ALR 790. That search was made and its validity was upheld under the search and seizure provisions enacted for the enforcement of the National Prohibition Act and of that Act alone.

• • •

We see no grounds for expanding the ruling in the Carroll case to justify this arrest and search as incident to the search of a car. We are not convinced that a person by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled."

CONCLUSION

Petitioners' constitutional rights have been violated in that (1) they were unlawfully arrested by a state officer; (2) an illegal search and seizure was made of the automobile in which they were passengers; and (3) they were convicted of unlawfully, knowingly and feloniously having in their possession the fruits of the unlawful search and seizure.

Petitioners were passengers in a Chevrolet Impala which was being operated by Berry Smith, Jr., who was jointly indicted with petitioners for unlawful possession

of alleged burglary tools found in the trunk of the Chevrolet about an hour after Berry Smith, Jr., and petitioners had been arrested, the automobile locked and left on the highway while they were taken to a county jail. No crime had been committed in the state officer's presence at the time he arrested petitioners, and the car in which petitioners were riding was not known or suspected of hauling contraband. A severance was had as to Berry Smith, Jr., who was convicted of the unlawful possession of the alleged burglary tools found in the trunk of his automobile. The Supreme Court of the State of Mississippi reversed the conviction and dismissed the indictment because "the search made of defendant's (Berry Smith, Jr.) automobile was an incident to an illegal arrest, and was an unlawful search."

Contrary to the opinion of the Supreme Court of Mississippi, see Appendix A and B, petitioners have "standing" as persons aggrieved by an unlawful search and seizure by virtue of their conviction for the wrongful possession of the fruits of the unlawful search and seizure. *Jones v. United States*, supra. The arrest as well as the subsequent search and seizure of articles which formed the basis of petitioner's conviction were invalid and the subsequent conviction should be reversed and the indictment dismissed. *Smith v. State*, supra; *Rio v. United States*, supra; and *Contreras v. United States*, supra.

APPENDIX

IN THE SUPREME COURT OF MISSISSIPPI

NO. 41,948

WILLIAM L. HEAD AND JESSE M. CUMMINGS,

vs.

STATE OF MISSISSIPPI

McELROY, JUSTICE:

Appellants were jointly indicted with Berry Smith, Jr., for possession of burglary tools in Forrest County, Mississippi. After severance granted Smith was separately tried, convicted and sentenced to the penitentiary. Smith appealed his conviction and in Smith v. State, 128 So. 2d 857, his conviction was reversed and he was discharged on the question of illegal search under the Constitution since he was in control and possession of the car. The appellants, Head and Cummings, were passengers in the car, one on the front seat and the other on the rear seat. These appellants were then tried together, convicted and sentenced to serve a term of five years in the State penitentiary, from which conviction and judgment this appeal is taken.

The facts in this case are identical with those in Smith v. State, supra, except those facts apply to the driver of the car and the person in possession of the car. Therefore, the defendants herein, as passengers in the car, are in a different situation than the appellant, Smith, in the former trial.

About 8:30 or 9 o'clock at night, near the airport gate southeast of the City of Hattiesburg, Forrest County, Mississippi, the sheriff, Bob Waller, was patroling in an unmarked car about ten or fifteen miles per hour when he met a Chevrolet Impala automobile traveling at a very slow rate of speed in the opposite direction. The Sheriff passed the Chevrolet, turned around and came up behind it. The driver of the Chevrolet, Smith, motion the Sheriff to come up beside his car. The Sheriff pulled up beside the stopped Chevrolet and rolled his window down. When the driver of the Chevrolet saw that it was the Sheriff, he drove away rapidly. As the Sheriff described it in the case at bar, the car occupied by appellants "scratched out" and "took off in a cloud of smoke." The Sheriff sounded his siren and immediately pursued the Chevrolet. Within ten seconds the Chevrolet was exceeding the speed limit.

The record in this case discloses that during this chase up Highway 49 by-pass, several articles were thrown out of the window on the right-hand side of the Chevrolet. These articles were thrown out by the defendants, the passengers in the car. One of these appellants was sitting in the front seat on the right-hand side, and the other appellant was sitting in the rear. Searches along the road shoulder resulted in the finding of gloves, a cap, a pistol and a shoulder holster in which the pistol was a perfect fit, other gloves, a .45 calibre revolver, an assortment of tools established to be burglary tools, and other tools. Among the items found was a gas mask, and it was shown by the testimony of the sheriff that in the Hattiesburg vicinity there were several safes equipped to eject a disabling gas when opened. Additional things were found in the trunk of the car, including clothes, money wrappers, money in some of the socks, and many

other articles which the jury was fully justified in finding that same were used as burglary tools.

The appellants rely on Smith v. State, supra, a companion suit to this case. The law of that case is not applicable here. Berry Smith, Jr., was the driver of the car, and this Court took into consideration in that case that Smith was the owner and in the rightful possession of the car and had a perfect right to object to the unlawful search. Neither of the present appellants can make the same objection. One of these appellants was in the front seat on the right side and the other was in the back seat. They were both seen throwing the articles out of the car, and later when the sheriff went back to the car he found further articles on the right side of the front seat and on the back seat.

In order to avail of the constitutional provision of unlawful search and seizure, the sheriff must invade the premises or property of defendant, and such defendant must at least have a right of possession that would make him owner for the time being.

In Rose v. State, 76 So. 2d 835, (Miss.), the Court said:

"On the night after the robbery officers stopped an automobile which was being driven by Ballow, and in which Wood, Scott and Rose were also riding. In the car the officers found pistols and a rope which the evidence shows were used in the robbery. Proof was made of that on the trial of this appellant. Rose says it was error to make that proof because the officer had no warrant to search the car. The contention is not well taken. In addition to the fact that the automobile was exceeding the speed limit, in the presence of the officers, it is shown that Rose did not own, or claim to own, the automobile, nor did he claim to be in possession thereof,

rightfully or otherwise. The car was being driven by Ballow, and Rose was on the back seat. It was licensed in the name of a Mrs. Stevens. To be in position to complain of an illegal search, one must either be the owner or in the rightful possession of the property searched. Lee v. City of Oxford, 134 Miss. 647, 99 So. 509; Lucas v. City of Oxford, 134 Miss. 647, 99 So. 509; Lucas v. City of Oxford, 134 Miss. 771, 99 So. 510; Ross v. State, 140 Miss. 367, 105 So. 846; Polk v. State, 167 Miss. 506, 142 So. 480; McLemore v. State, 178 Miss. 525, 172 So. 139; Brown v. State, 192 Miss. 314, 5 So. 2d 426; Smith v. State, 198 Miss. 788, 24 So. 2d 85; Harris v. State, 216 Miss. 895, 63 So. 2d 396; Brooks v. State, Miss., 52 So. 2d 609. The Brooks case involved property taken from an automobile not owned or in the rightful possession of the accused."

Since the defendants were not in possession of the automobile, either in the control or ownership of the car, they have no right to raise the constitutional question of search.

The appellants objected to the instruction No. 1 as follows:

"The Court instructs the Jury for the State that under the law of this State the carrying concealed about one's person or in one's baggage implements, tools or instruments peculiarly adapted to aid in the commission of burglary shall be prima facie evidence of intention to use them for such purpose. Therefore, if you believe from the evidence in this case beyond a reasonable doubt that the defendants carried concealed about their persons, or in their baggage, implements, tools, or instruments peculiarly adapted to aid in the commission of burglary, then you are instructed that this is prima facie evidence of intention to use them for such purposes."

We find no error in this instruction. Practically every judicial definition of the word "baggage" is not merely the suitcase or other container commonly used by travelers in carrying their property, but the word refers to the property itself. The term "baggage" has been held to include tools used in a trade and usually carried about by the owner from place to place in his trunk; razors and other tools of a barber; carpenter tools carried in a trunk with the owner's clothing. One case held the term was to include "a rifle, revolver, two gold chains, two gold rings, a silver pencil case" belonging to a traveler for pleasure and amusement. For scores of judicial definitions of this term, see page 19 of Words and Phrases, Perm. Ed., Vol. 5.

We find no error in the trial of the case, therefore, the case is affirmed.

AFFIRMED.

LEE, P. J., AND ARRINGTON, RODGERS AND JONES, JJ., CONCUR.

Monday, January 22, 1962, Court Sitting:::::

William L. Head and Jesse M. Cummings,
41,948 vs.
State.

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Forrest County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the January 1961 Term—a conviction of the unlawful possession of burglary tools and a sentence to 5 years each in the State Penitentiary—be and the same is hereby affirmed. It is further ordered and adjudged that the State of Mississippi do have and recover of and from the appellants and United Bonding Insurance Company, surety on the appeal bonds herein, all of the costs of this appeal to be taxed, for which let proper process issue.

Monday, February 26th, 1962. Court Sitting:::::::

William L. Head and Jesse M. Cummings,
41,948 vs.
State.

This cause this day came on to be heard on the suggestion of error filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.

STATE OF MISSISSIPPI
HINDS COUNTY

I, Tom Q. Ellis, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the above and foregoing is a true and correct copy of the opinion delivered by the Court, a true and correct copy of the judgment rendered by the Court and a true and correct copy of the order overruling Suggestion of Error, in Cause No. 41,948 styled—William L. Head and Jesse M. Cummings vs State of Mississippi as the same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office, in the City of Jackson, Miss., this the 18th day of April, A. D. 1962.

TOM Q. ELLIS
Clerk of Supreme Court

BY JULIA KENDRICK, D.C.